IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37514 of 2007(N)

PETITIONER:

M/S.KOVALAM HOTELS LIMITED,
KOVALAM-695 527, REPRESENTED BY ITS FINANCIAL CONTROLLER B.KANNAN, S/O.LATE R.BALASUBRAMONIAN, AGED 53 YEARS, RESIDING AT POORNIMA, KAITHAMUKKU, THIRUVANANTHAPURAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)

RESPONDENTS:
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1. **THE INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE), DEPARTMENT OF COMMERCIAL TAXES, PUBLIC OFFICE BUILDINGS, C BLOCK, THIRUVANANTHAPURAM-695 033.**

2. **THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, THIRUVANANTHAPURAM.**

3. **M/S.UNION BANK OF INDIA, THIRUVANANTHAPURAM MAIN BRANCH, THIRUVANANTHAPURAM.**

4. **THE INTELLIGENCE OFFICER, SQUAD NO.I, DEPARTMENT OF COMMERCIAL TAXES, REVENUE COMPLEX, C BLOCK, THIRUVANANTHAPURAM-695 033.**

5. **THE SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.**

BY GOVT. PLEADER SRI.C.K.GOVINDAN
SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 37514 OF 2007
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Dated this the 18th day of December, 2007

J U D G M E N T

Against Ext.P1 order imposing penalty of more than Rs.61 lakhs, first appeal was filed by the petitioner, which resulted in Ext.P2, wherein the quantum of penalty was reduced. It is submitted that in terms of Ext.P2, liability got reduced to Rs.30,97,352/-. Still aggrieved, petitioner filed Ext.P3 second appeal before the 5th respondent along with Ext.P4 application for stay. Although the petitioner sought early hearing by filing Ext.P5, orders have not been passed in that also. Apprehending that Ext.P7 Bank guarantee furnished towards the liability under Ext.P1 will be invoked, this writ petition has been filed.

2. Now that the petitioner has already approached the 5th respondent by filing Ext.P3 appeal and Ext.P4 stay petition, I feel that before any further coercive action is initiated against the

petitioner for realising the amount due under Ext.P2, the appeal also should be considered by the 5th respondent. It is all the more so for the reason that the entire amount is already secured by a bank guarantee furnished by the petitioner.

3. Therefore, I dispose of this writ petition directing that the 5th respondent shall take up and consider Ext.P3 appeal with notice to the petitioner, as expeditiously as possible, at any rate within ten weeks of production of a copy of this judgment.

In the meantime, further proceedings for realising the amount due in terms of Ext.P2 will stand deferred on condition that in substitution of Ext.P7 bank guarantee furnished by the petitioner, the petitioner shall furnish a fresh bank guarantee for the full amount covered by Ext.P2 to the satisfaction of the 1st respondent. The bank guarantee shall be furnished by the petitioner within two weeks from today and kept alive until the disposal of the appeal.

ANTONY DOMINIC, JUDGE.

Rp